



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

FISH & RICHARDSON P.C.
45 ROCKEFELLER PLAZA, SUITE 2800
NEW YORK, NY 10111

COPY MAILED

DEC 19 2003

OFFICE OF PETITIONS

In re Application of :
Guillaume et al. :
Application No. 10/613,952 : ON PETITION
Deposited: July 3, 2003 :
Attorney Docket No.: 08291-710002 :

This is a decision on the petition filed October 20, 2003 under 37 CFR 1.181 (a)(2), requesting that the above-identified application be accorded a filing date of July 3, 2003. This petition is being treated under 37 CFR 1.53.

The application was deposited on July 3, 2003, claiming status as a divisional of prior application No. 09/937,050. However, on October 7, 2003, the Office of Initial Patent Examination mailed a "Notice of Incomplete Nonprovisional Application" stating that a filing date had **not** been granted and requiring drawings as described in the specification. The "Notice" further stated that the filing date would be the date of receipt of the omitted drawings.

In response, 3 sheets of drawings, including figures No. 1-6, a copy of the first page of patent No. 6,516,363, application 09/937,050 and the present petition were filed on October 20, 2003. The Office has obtained a copy of applicants' transmittal letter which includes a statement incorporating the entire disclosure of the prior application into the disclosure of the present application.

In view of the incorporation by reference of the prior application, the drawings of figures 1-6 supplied on October 20, 2003, would not constitute new matter if they were part of the original disclosure of the prior application. Applicants state that application No. 09/937,050 contains the drawings referred to in the specification of the present application and that the drawings supplied with the petition are the drawings which were not received on July 3, 2003.

Based on applicants' representation that the drawings which are described in the specification are a part of the disclosure of application No. 09/937,050 and the entire disclosure of application No. 09/937,050 was specifically incorporated by reference in the present application on July 3, 2003, it appears that the drawings were present in the Office on July 3, 2003, albeit in the file of another application, i.e., application No. 09/937,050. Therefore, on petition, the application may be accorded the requested filing date.

The petition is granted.

The petition fee will not be refunded, since the petition was not necessitated by any error on the part of the USPTO.

Of course, the primary examiner is expected to compare the drawings supplied on October 20, 2003, to the disclosure of prior application No. 09/937,050 in order to verify that the drawings are, in fact, part of the disclosure of the prior application.

A newly executed oath or declaration is not required under 37 CFR 1.51(b)(2) and 1.53(f) in a continuation or divisional application, provided that the specification and drawings filed in the continuation or divisional application contain no matter that would have been new matter in the prior application. See 37 CFR 1.63(d)(1). For initial processing purposes, it is presumed that the drawings filed October 20, 2003, contain no matter that would have been new matter in the prior application.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of July 3, 2003, using the three (3) sheets of drawings supplied on October 3, 2003.

Telephone inquiries related to this decision may be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.

C. T. Donnell
Christina T. Donnell
Senior Petitions Attorney
Office of Petitions